IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 1095 of 2000()

CRA.256/1997 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.37/1996 of JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARI

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REVN. PETITIONER:

KANAKAN, AGED 39, S/O.NARAYANAN,
RAJESH BHAVAN, WARD NO.2,
PULINCUNNU PANCHAYATH,
KUTTANAD TALUK.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.5837/2000 IN CRL.R.P.NO.1095/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

18/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1095/2000-B

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Dated this the 18th day of September, 2007

O R D E R

The revision petitioner/accused stands convicted for the offence under Section 55(i) of the Abkari Act on the allegation that on 03/08/1995 at 4 p.m, PW.4, the Sub Inspector who was on patrol duty detected the accused carrying toddy at Korattu Junction at Pulincunnu. He stands sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for three months for the offence under Section 55(i) of the Abkari Act.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 4, Exts.P1 to P5 and MO.1 jerry can. The accused was himself examined as DW.1 and got marked Ext.D1 identity card.

3. The prosecution version is that 18 litres of toddy was seized from the accused. The same was confirmed to be toddy as per Ext.P3 chemical analysis report. PW.2 the independent witness did not support the prosecution. It is the version of PW.1 the Head Constable

and PW.4 the Sub Inspector who were in the police party that establish the prosecution version as to the custody of the toddy with the accused.

4. The version of DW.1 is that he is a licensed toddy tapper and attached to a particular shop. The courts below have rightly rejected his contentions as the identity card would only show that he is a member of the Toddy Welfare Fund and not a tapper. The shop owner was not examined. In the circumstances, I find no reason to interfere with the concurrent findings of the courts below. The conviction is confirmed.

5. The counsel for the revision petitioner has pleaded for leniency pointing out that more than ten years have elapsed since the commencement of the proceedings. In the circumstances and considering the fact that the article recovered is not illicit liquor, the sentence is modified to imprisonment till the rising of the court and to pay a fine of rupees five thousand and in default to undergo simple imprisonment for one month. The revision petitioner is granted two months time to remit the fine amount. He shall appear before the

Judicial Magistrate of the First Class, Ramankary, on 26/11/2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1095/2000-B

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O R D E R

18th September, 2007